

Message Text

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LIMDIS

E.O. 11652: GDS
TAGS: PEPR, PINT, PN
SUBJECT: THE PLEBISCITE THAT WON'T BE AND THE FUTURE OF
THE TREATIES

SUMMARY: THE TREATIES WILL NOT BE RESUBMITTED TO A
PLEBISCITE. WE BELIEVE THERE IS LITTLE REASON TO
FEAR THAT THE VALIDITY OF PANAMA'S OBLIGATIONS
UNDER THE NEW TREATIES WILL BE SUCCESSFULLY CHALLENGED
HERE BECAUSE OF THIS OMISSION. BUT WE DO EXPECT
CONTINUED QUESTIONING OF THE LEGITIMACY UNDER
INTERNATIONAL LAW OF SOME ASPECTS, PARTICULARLY THE
"INTERVENTION" ISSUE. AT SOME POINT IN THE FUTURE
WE CAN EXPECT PANAMANIAN--AND PROBABLY SOME POST-
TORRIJOS GOVERNMENT--TO TRY TO REOPEN SOME OF THE
QUESTIONS WE WOULD LIKE TO HAVE "SETTLED" WITH THESE
TREATIES. END SUMMARY.

1. TORRIJOS STATED ON APRIL 18 WHAT HAS BEEN FAIRLY
CLEAR FOR SOME TIME: HE IS NOT THINKING OF SUBMITTING
TO A NEW PLEBISCITE THE TREATIES AS AMENDED, RESERVED,
CONDITIONED AND UNDERSTOOD BY THE U.S. SENATE. THIS
HAS RAISED IN SOME MINDS THE QUESTION OF WHETHER SOME
FUTURE GOVERNMENT MIGHT NOT DECLARE THE TREATIES VOID,
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CLAIMING THEY HAD NOT BEEN PROPERLY RATIFIED. SINCE
THE SENATE GAVE ITS ADVICE AND CONSENT, WE HAVE DISCUSSED
THIS MATTER INFORMALLY WITH A WIDE SPECTRUM OF LAWYERS,
POLITICIANS AND OTHERS. WE HAVE COME AWAY PERSUADED
THAT A SERIOUS THREAT TO ACCEPTANCE OF THE VALIDITY OF
PANAMA'S SITUATION UNDER THE TREATIES IS UNLIKELY,
AT LEAST FOR A LONG TIME TO COME. JUST AS THEY HAVE

CALLED THE 1903 TREATY ILLEGITIMATE, PANAMANIAN WILL QUESTION THE LEGITIMACY OF CERTAIN ASPECTS OF THE NEW TREATIES, PARTICULARLY THE "INTERVENTION" CLAUSES IN THE NEUTRALITY TREATY. AT THE SAME TIME THEY WILL ADMIT ITS DE FACTO VALIDITY AND WILL -- AT SOME POINT -- TRY TO OPEN NEGOTIATIONS TO CHANGE IT.

2. AN OVERWHELMING MAJORITY OF THOSE WITH WHOM WE HAVE TALKED BELIEVE THAT, CONSTITUTIONALLY, THERE SHOULD BE ANOTHER PLEBISCITE. BUT MOST, EVEN SOME WHO ARE PUBLICLY CALLING FOR ONE, BELIEVE THAT VERY FEW PANAMANIAN REALLY WANT TO GO THROUGH THAT AGAIN. PEOPLE ARE SICK OF THE TREATY QUESTION. MOST WANT TO MOVE ON TO OTHER CONCERNS. NO ONE SERIOUSLY EXPECTS A NEW PLEBISCITE.

3. MOST IMPORTANTLY, EVEN THOSE WHO OPPOSED THE TREATIES OR WERE MOST OFFENDED BY DECONCINI AND OTHER "INSULTS" ADMINISTERED BY THE SENATE USUALLY REALIZE THAT THE TREATIES REPRESENT A VERY REAL GAIN FOR PANAMA. THEY BELIEVE NO GOVERNMENT WILL--AND FEW PANAMANIAN WOULD WANT IT TO--IMPERIL THOSE GAINS, MUCH LESS GO BACK TO THE 1903 TREATY.

4. THEREFORE, THE GOVERNMENT WILL BE ABLE TO RATIFY THE TREATIES AND BRING THEM INTO FORCE. AND THERE
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IS A VIRTUAL CONSENSUS HERE THAT, ONCE THEY GO INTO EFFECT, NEARLY ALL PANAMANIAN WILL ACKNOWLEDGE THAT PANAMA IS STUCK WITH THEM UNDER INTERNATIONAL LAW. THE QUESTION OF WHETHER OR NOT THERE SHOULD HAVE BEEN ANOTHER PLEBISCITE WILL BE A QUESTION OF HISTORICAL INTEREST, BUT LEGALLY AND POLITICALLY OF LITTLE WEIGHT, ACCORDING TO MOST OF OUR CONTACTS.

5. BUT THERE IS A DIFFERENCE BETWEEN ACKNOWLEDGMENT OF THE REAL-WORLD VALIDITY OF A TREATY AND FULLY ACCEPTING ITS LEGITIMACY, AS PANAMANIAN CRITICISM OF THE 1903 TREATY HAS SHOWN. BY FAR THE MORE VULNERABLE OF THE TWO TREATIES ON THIS SCORE IS THE NEUTRALITY PACT. IT WOULD HAVE COME UNDER ATTACK IN ANY EVENT SINCE IT GIVES THE U.S. THE RIGHT TO COME INTO PANAMA UNILATERALLY UNDER CERTAIN CONDITIONS. THE DECONCINI AMENDMENT--EVEN WITH THE LEADERSHIP CLARIFICATION OF IT--DRAGGED THIS INTO THE OPEN, AND IT WILL NOT GO AWAY. A NUMBER OF COMMENTATORS HAVE ALREADY BEGUN TO SPEAK OF A "CONTINUING STRUGGLE" AND OF ULTIMATELY "PERFECTING" PANAMA'S SOVEREIGNTY. WE CONSIDER IT ALMOST CERTAIN THAT MANY PANAMANIAN WILL WANT TO REOPEN THIS

ASPECT OF THE NEUTRALITY TREATY BEFORE TOO VERY
LONG. AND GIVEN THIS ATTITUDE, IT IS VERY LIKELY THAT
SOME GOVERNMENT--PROBABLY POST-TORRIJOS--WILL FORMALLY
RAISE IT WITH US.

6. FORGIVE OUR VENTURE INTO FUTUROLOGY. WE MERELY
BELIEVE IT IS WELL TO TRY TO ESTIMATE AT THE OUTSET
THE MAGNITUDE OF THE PROBLEMS WE HAVE CREATED WHILE
WE WERE SOLVING THOSE OF THE PAST.
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